

36 CFR part 215 – 11/4/93	36 CFR part 215 6/4/03	Notes
<p>Sec. 215.1 Purpose and scope.</p> <p>(a) Purpose. The rules of this part have two purposes. First, this part establishes a process by which persons or organizations may receive notice and be provided opportunity to comment on proposed actions implementing national forest land and resource management plans prior to a final decision by the responsible official. This includes notice of and opportunity to comment on nonsignificant amendments of land and resource management plans that are conjunction with those proposed actions. Second, this part provides for and prompt administrative review of project and activities implementing forest plans and establishes who may appeal decisions on planned actions, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply.</p> <p>(b) Scope. The process established in this part constitutes the final administrative opportunity for the influence National Forest System decisionmaking prior to implementation. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence agency's decisionmaking provided pursuant to the National Environmental Policy Act of 1969, the National Forest Management Act, and the implementing regulations and procedures in 40 CFR parts 1500-1508 and 36 CFR parts 216 and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15.</p>	<p>§215.1 Purpose and scope.</p> <p>(a) <i>Purpose.</i> The rules of this part have two purposes. First, this part establishes a process by which the public receives notice and is provided an opportunity to comment on proposed actions for projects and activities implementing a land and resource management plan prior to a decision by the Responsible Official. Second, this part establishes an appeal process and identifies the decisions that may be appealed, who may appeal those decisions, the responsibilities of the participants in an appeal, and the procedures that apply for the prompt disposition of the appeal.</p> <p>(b) <i>Scope.</i> The notice of proposed actions and opportunity to comment provides an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land and resource management plans. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence the agency's project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA) implementing regulations and procedures at 40 CFR parts 1500-1508, the National Forest Management Act (NFMA) implementing regulations at part 219, and the pertinent requirements at part 216 regarding notice and comment for certain Forest Service Manual (FSM) directives. The appeal process is available to those who submit substantive comments during the comment period. Appeal disposition constitutes the final administrative determination of the United States Department of Agriculture. Throughout this part, references to decisions which affect an authorized use or occupancy of National Forest System lands and meet all other applicable requirements of this part, are subject to appeal by the holders of such authorizations under either this part or part 251, subpart C, but not under both parts. In addition, certain other parties meeting requirements of §251.86 may also be eligible to appeal projects under either this part or part 251, subpart C, but not under both parts.</p>	

36 CFR part 215 – 1993 version	36 CFR part 215 – 2003 version	Notes
<p>Sec. 215.2 Definitions.</p> <p>For the purpose of this part--</p> <p>Appeal is the written document filed with an Appeal Deciding Officer by one who objects to a decision covered by this part.</p> <p>Appeal Deciding Officer is the Forest Service line officer having the delegated authority and responsible to render a decision on an appeal filed under this part.</p> <p>Appeal Period is the 45 calendar-day period during which an appeal may be filed with the Appeal Deciding Officer.</p> <p>Appeal Record is the information assembled and/or created during the course of an appeal and upon which review of an appeal is conducted. It consists of the decision documentation, the appeal, the Responsible Official's documentation of the informal disposition meeting, the public notice of decision document, and written comments submitted by interested parties.</p> <p>Appeal Reviewing Officer is an agency official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on the disposition of the appeal.</p> <p>Appellant is a person or organization filing an appeal under this part.</p> <p>Categorical Exclusion refers to a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; Forest Service Handbook 1909.15, Chapter 30).</p> <p>Comment Period is the 30 calendar day period, following publication of the notice for public comment, available to interested persons to provide comments to a Responsible Official on a proposed action subject to this part.</p> <p>Decision Document is the document that records the decisions for actions implementing land and resource management plans. (See also, Record of Decision and Decision Notice, and Decision Memo.)</p> <p>Decision documentation refers to the decision document and all relevant environmental and other analysis</p>	<p>§215.2 Definitions.</p> <p>Address - An individual's or organization's current physical mailing address. An e-mail address is insufficient for identification.</p> <p>Appeal - The written document filed with an Appeal Deciding Officer by someone seeking review of a decision.</p> <p>Appeal Deciding Officer - The Secretary of Agriculture (USDA) or the USDA or Forest Service designee having the delegated authority and responsibility to render a decision on an appeal filed under this part. The Appeal Deciding Officer is the next higher-level supervisor of the Responsible Official.</p> <p>Appeal disposition - Either a written appeal decision or written notification in cases where the original decision is the final agency action and no appeal decision is issued.</p> <p>Appeal period - The 45-calendar-day period following publication of the legal notice in the newspaper of record of a decision during which an appeal may be filed with the Appeal Deciding Officer.</p> <p>Appeal record - The information upon which review of an appeal is conducted, consisting of the transmittal letter, the appeal, decision documentation, the legal notice of decision, the Responsible Official's documentation of the informal disposition meeting, and the Appeal Reviewing Officer's recommendation.</p> <p>Appeal Reviewing Officer - A Forest Service line officer or USDA official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on disposition of the appeal.</p> <p>Appellant - An individual or organization filing an appeal who submitted substantive oral or written comments during the comment period on a specific project or activity.</p> <p>Categorically excluded (CE) - Proposed actions, which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; FSH 1909.15, Chapter 30).</p> <p>Comment period - The 30-calendar-day period following</p>	<p>✓ <u>Added:</u> address, appeal disposition, emergency situation, lead appellant, name, National Forest System land, newspaper of record, projects and activities implementing a land and resource management plan, substantive comments, transmittal letter</p> <p>✓ <u>Revised:</u> Appeal, Appeal Deciding Officer, Appeal period, Appeal record, Appeal Reviewing Officer, Appellant, Categorically excluded (CE), Comment period, Decision documentation, Environmental Assessment, Forest Service line officer, Proposed action, and Responsible Official</p> <p>✓ <u>Deleted:</u> decision document, Decision Memo, interested party, proposed timber harvest categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4</p>

<p>documentation and records on which the Responsible Official based a decision that is at issue under an appeal filed pursuant to this part. Decision documentation may include, but is not limited to, a project or case file, Record of Decision, Decision Notice, Decision Memo, environmental assessment, finding of no significant impact, draft and final environmental impact statement, land and resource management plan, regional guide, and documents incorporated by reference in any of the preceding documents.</p> <p>Decision Memo is a concise written record of a Responsible Official's decision to implement actions that have been categorically excluded from documentation in an environmental impact statement or environmental assessment (40 CFR 1508.4, Forest Service Handbook 1909.15, Chapter 30).</p> <p>Decision Notice is a concise written record of a Responsible Official's decision based on an environmental assessment and a finding of no significant impact. (40 CFR 1508.9, Forest Service Handbook, 1909.15, Chapter 40).</p> <p>Environmental Assessment is a concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (40 CFR 1508.9, Forest Service Handbook (FSH) 1909.15, Chapter 40).</p> <p>Environmental Impact Statement is a detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).</p> <p>Finding of No Significant Impact (FONSI) is a document prepared by a federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR 1508.13; Forest Service Handbook 1909.5, Chapter 40).</p> <p>Forest Service line officer is a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part. Specifically, for the purposes of this part, a Forest</p>	<p>publication of the legal notice in the newspaper of record of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part, except for projects requiring an EIS which follow CEQ procedures for notice and comment (40 CFR parts 1503 and 1506.10; FSH 1909.15, Chapter 20). The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day.</p> <p>Decision documentation - The Decision Notice (DN) or Record of Decision (ROD) and all relevant environmental and other analysis documentation and records, including all comment letters received, on which the Responsible Official bases a decision under appeal.</p> <p>Decision Notice (DN) - A concise written record of a Responsible Official's decision based on an environmental assessment and a Finding of No Significant Impact (FONSI) (40 CFR 1508.13; FSH 1909.15, Chapter 40).</p> <p>Emergency situation - A situation on National Forest System (NFS) lands for which immediate implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety or natural resources on those NFS or adjacent lands; or that would result in substantial loss of economic value to the Federal Government if implementation of the decision were delayed.</p> <p>Environmental Assessment (EA) - A concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).</p> <p>Environmental Impact Statement (EIS) - A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).</p>	
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<p>Service employee who holds one of the following offices and titles: District Ranger, Deputy Forest Supervisor, Forest Supervisor, Deputy Regional Forester, Regional Forester, Associate Deputy Chief, Deputy Chief, Associate Chief of the Forest Service, or an employee delegated the authority to act in one of these capacities.</p> <p>Interested Party is a person or organization other than the appellant that provides written information to the Appeal Reviewing Officer regarding an appeal.</p> <p>Proposed Action is a proposal made by the Forest Service to authorize, recommend, or implement an action on National Forest System lands to meet a specific purpose and need.</p> <p>Proposed Timber Harvest Categorically Excluded from Documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4 is timber harvest which removes 250,000 board feet or less of merchantable wood products, or salvage which removes 1,000,000 board feet or less of merchantable wood products; which requires one mile or less of low standard road construction (Service level D. FSH 7709.56); and assures regeneration of harvested or salvaged areas, where required; which normally are categorically excluded from documentation in an environmental assessment or environmental impact statement; and for which a project or case file and decision memo are required (Forest Service Handbook 1909.12, sec. 31.2, para. 4).</p> <p>Record of Decision is a document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; Forest Service Handbook 1909.15, Chapter 20).</p> <p>Responsible Official is the Forest Service line officer who has the authority and responsibility to make decisions on proposed actions subject to notice, comment and appeal under this part.</p>	<p>Finding of No Significant Impact (FONSI) - A document prepared by a Federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR1508.13; FSH 1909.15, Chapter 40).</p> <p>Forest Service line officer - A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part.</p> <p>Lead appellant - For appeals submitted with multiple names, or having multiple organizations listed, the appellant identified to represent all other appellants for the purposes of communication, written or otherwise, regarding the appeal. The use of the generic term "appellant" applies to lead appellant also.</p> <p>Name - The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.</p> <p>National Forest System land - All lands, waters or interests therein administered by the Forest Service (§251.51).</p> <p>Newspaper(s) of record - Those principal newspapers of general circulation annually identified in a list and published in the Federal Register by each Regional Forester to be used for publishing notices of projects and activities implementing land and resource management plans.</p> <p>Projects and activities implementing a land and resource management plan - Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice (DN) or Record of Decision (ROD) by a Forest Service official.</p> <p>Proposed action - A proposal made by the Forest Service that is a project or activity implementing a land and resource management plan on National Forest System lands and is subject to the notice and comment provisions of this part.</p> <p>Record of Decision (ROD) - A document signed by a Responsible Official recording a decision that was preceded by</p>	
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	<p>preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).</p> <p>Responsible Official - The Forest Service employee who has the delegated authority to make and implement a decision subject to this part.</p> <p>Substantive comments - Comments that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action and include supporting reasons for the Responsible Official to consider.</p> <p>Transmittal letter - The Responsible Official's letter transmitting the decision documentation. The letter shall include only an index of the transmitted documents and identification of those portions of the record that relate to the issues raised.</p>	
<p>Sec. 215.3 Proposed actions subject to notice and comment.</p> <p>The notice and comment procedures of 215.5 apply only to the following actions:</p> <p>(a) Proposed actions implementing national forest land and resource management plans (36 CFR 219.11) for which an environmental assessment is prepared.</p> <p>(b) Proposed timber harvest as described in Paragraph 4, section 31.2 of Forest Service Handbook 1905.15 for which a project or case file and Decision Memo are required.</p> <p>(c) Nonsignificant amendments (36 CFR part 219) to land and resource management plans that are included as part of a decision on a proposed action as specified in paragraph (a) of this section.</p> <p>(d) Proposed actions on those National Forests which do not yet have approved land and resource management plans prepared pursuant to 36 CFR part 219 as follows</p> <p>(1) Proposed actions for which an environmental assessment is prepared; or</p> <p>(2) Proposed timber harvest as described in Paragraph 4, section 31.2 of which a project case file and Decision Memo is required.</p> <p>(e) Proposed forestry research activities to be conducted on National Forest System lands for which an environmental assessment has been prepared.</p>	<p>§215.3 Proposed actions subject to legal notice and opportunity to comment.</p> <p>The legal notice (§215.5) and opportunity to comment procedures (§215.6) apply only to:</p> <p>(a) Proposed projects and activities implementing land and resource management plans (§215.2) for which an environmental assessment (EA) is prepared;</p> <p>(b) Proposed projects and activities described in a draft environmental impact statement (EIS), for which notice and comment procedures are governed by 40 CFR parts 1500-1508 also;</p> <p>(c) Proposed non-significant amendments to a land and resource management plan (pursuant to the 1982 planning regulations) that are included as part of a decision on a proposed action for which an EA is prepared;</p> <p>(d) A proposed action resulting in a revision of an EA based on consideration of new information or changed circumstances (FSH 1909.15, Chapter 10, section 18) as provided for in §215.18(b)(1); and</p> <p>(e) Proposed research activities to be conducted on National Forest System lands.</p>	<p>✓ <u>Added</u>: DEIS, revised EA based on new information,.</p> <p>✓ <u>Deleted</u>: Proposed timber harvest (CE #4) and references to proposed actions on NFs without approved Forest Plans</p>

<p>Sec. 215.4 Actions not subject to notice and comment.</p> <p>The following proposed actions are not subject to notice and comment procedures of Sec. 215.5</p> <p>(a) Actions described in a draft environmental impact statement for which notice and comment procedures are governed by 40 CFR parts 1500-1508;</p> <p>(b) Actions categorically excluded from documentation in an environmental impact statement or environmental assessment pursuant to 7 CFR 1b.3 or FSH 1909.15, sections 31.1 and 31.2, except timber harvest actions as specified in Sec. 215.3(b) and (d)(2);</p> <p>(c) Any action or policy not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500-1508;</p> <p>(d) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.) or policies and procedures issued in Forest Service Manuals and Handbooks (36 CFR parts 200, 216);</p> <p>(e) A nonsignificant amendment to a land and resource management plan which is made separately from a proposed action specified in Sec. 215.3(c) and which, therefore, is subject to appeal under part 217 of this chapter</p>	<p>§215.4 Actions not subject to legal notice and opportunity to comment.</p> <p>The procedures for legal notice (§215.5) and opportunity to comment (§215.6) do not apply to:</p> <p>(a) Projects and activities which are categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) pursuant to FSH 1909.15, Chapter 30, section 31;</p> <p>(b) Proposed amendments to, revision of, or adoption of land and resource management plans that are made separately from any proposed actions, and which are therefore subject to subject to either the objection process of §219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000);</p> <p>(c) Projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500-1508 and the National Forest Management Act and the implementing regulations at 36 CFR part 219;</p> <p>(d) Determinations by the Responsible Official, after consideration of new information or changed circumstances, that a revision of the EA is not required (1909.15, Chapter 10, section 18); and</p> <p>(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.) or policies and procedures issued in the Forest Service Manual and Handbooks (part 216).</p>	<p>✓ Draft EISs removed</p>
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<p>Sec. 215.5 Notice and comment on proposed actions.</p> <p>(a) Annual notice of newspapers. Annually, each Regional Forester shall, through notice published in the Federal Register, advise the public of the principal newspapers to be utilized for publishing notices required by this section.</p> <p>(b) Manner of giving notice. (1) The Responsible Official shall publish notice (of proposed actions as specified in Sec. 215.3 in a newspaper of general circulation identified pursuant to the requirements of paragraph (a) of this section.</p> <p>(2) The Responsible Official also shall give the public notice of the opportunity to comment on proposed actions subject to this part as follows:</p> <p>(i) For proposed actions requiring an environmental assessment, The Responsible Official shall promptly mail the environmental assessment along with a letter identifying the proposed action to any person who has requested it and to persons who are known to have participated in the environmental analysis process.</p> <p>(ii) For proposed timber harvest actions categorically excluded from documentation under Forest Service Handbook 1909.15, section 31.2, paragraph 4, the Responsible Official shall promptly mail a letter briefly describing the proposed to any person who has requested notice, to persons who are on a mailing list to receive notice of this type of decision, or to persons who are known to have participated in the decisionmaking process.</p> <p>(c) Content of the public notice for comment on proposed actions. All notices provided or published pursuant to this section shall include the following:</p> <p>(1) The title and brief description of the proposed action;</p> <p>(2) A general description of the proposed action location;</p> <p>(3) Instructions on how to obtain additional information on the proposed action;</p> <p>(4) The name, title, address, and telephone number of the Responsible Official to whom comments should be addressed; and</p> <p>(5) The date the comment period ends (Sec. 215.6(a)).</p>	<p>§215.5 Legal notice of proposed actions.</p> <p>(a) <i>Responsible Official.</i> The Responsible Official shall:</p> <p>(1) Provide notice of the opportunity to comment on a proposed action implementing the land and resource management plan.</p> <p>(2) Determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment.</p> <p>(3) Promptly mail notice about the proposed action to any individual or organization who has requested it and to those who have participated in project planning.</p> <p>(4) Publish a legal notice of the opportunity to comment on a proposed action as provided for in paragraph (b)(2).</p> <p>(5) Accept all written and oral comments on the proposed action as provided for in §215.6(a)(4).</p> <p>(6) Identify all substantive comments.</p> <p>(b) Legal notice of proposed action.</p> <p>(1) Content of legal notice. All legal notices shall include the following:</p> <p>(i) The title and brief description of the proposed action.</p> <p>(ii) A general description of the proposed action's location with sufficient information to allow the interested public to identify the location.</p> <p>(iii) A statement that the Responsible Official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the project or activity as provided for in §215.10, when applicable.</p> <p>(iv) For a proposed action to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (§215.6(a)(2)); legal notices shall not contain the specific date since newspaper publication dates may vary.</p> <p>(v) For a proposed action that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the Federal Register (§215.6(a)(2)). The legal notice must be</p>	<p>✓ Title changed to reflect notice and comment requirements now in separate sections</p> <p>✓ Term legal notice used instead of notice or public notice</p> <p>✓ Responsible Official responsibilities set out, including identifying substantive comments</p> <p>✓ Flexibility with timing of the comment period.</p> <p>✓ New requirements for legal notice</p> <p>✓ No date in legal notice</p> <p>✓ Legal notice for DEIS</p>
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	<p>published after the NOA and contain the NOA publication date.</p> <p>(vi) A statement that only those who submit timely and substantive comments will be accepted as appellants.</p> <p>(vii) The Responsible Official's name, title, telephone number, and addresses (street, postal, facsimile, and e-mail) to whom comments are to be submitted and the Responsible Official's office business hours for those submitting hand-delivered comments (§215.6(a)(4)(ii)).</p> <p>(viii) A statement indicating that for appeal eligibility each individual or representative from each organization submitting substantive comments must either sign the comments or verify identity upon request.</p> <p>(ix) The acceptable format(s) for electronic comments.</p> <p>(x) Instructions on how to obtain additional information on the proposed action.</p> <p>(2) <i>Publication.</i></p> <p>(i) Through notice published annually in the Federal Register, each Regional Forester shall advise the public of the newspaper(s) of record utilized for publishing legal notices required by this part.</p> <p>(ii) Legal notice of the opportunity to comment on a proposed action shall be published in the applicable newspaper of record identified in paragraph (b)(2)(i) for each National Forest System unit. When the Chief is the Responsible Official, notice shall also be published in the Federal Register. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit comments on a proposed action to be analyzed and documented in an EA. The publication date of the NOA in the Federal Register is the exclusive means for calculating the time to submit comments on a proposed action that is analyzed and documented in a draft EIS.</p>	
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<p>Sec. 215.6 Response to comments received proposed actions.</p> <p>(a) Comment period. The Responsible Official shall accept comments on an proposed action subject to Sec. 215.3 for 30 days following the date of publication of the notice for public comment. Both oral and written comments shall be accepted. The 30-day period for comment begins on the first day after publication of notice. Saturdays, Sundays, and Federal holidays are included in computing all time periods in this section; however, when the comment period ends on a Saturday, Sunday, or Federal holiday, the comment period shall be extended to the close of business of the next Federal working day.</p> <p>(b) Submission. Persons expressing an interest or submitting comments to the Responsible Official in response to a notice published or provided pursuant to Sec. 215.5 shall provide the following information, which will become a matter of public record:</p> <p>(1) Name, address, and (if possible) telephone number;</p> <p>(2) Title of the document(s) on which comment is being submitted; and</p> <p>(3) Specific facts or comments that along with supporting reasons that the person believes the Responsible Official should consider in reaching a decision.</p> <p>(c) Timeliness. It is the responsibility of persons providing comments to submit them by the close of the comment period.</p> <p>(1) When comments are received, the Responsible Official shall clearly identify the date of receipt.</p> <p>(2) The Responsible Official must consider all written comments postmarked or facsimile imprinted by the close of business on the 30th day following publication of the notice (Sec. 215.5) and all oral comments received by the close of business on the 30th day following publication of the notice.</p> <p>(d) The Responsible Official shall address comments received from the public during the comment period in an appendix to the environmental assessment. For proposed timber harvest actions to be categorically excluded from documentation under Forest Service Handbook 1909.15, section 31.2, paragraph 4, public comments and responses to</p>	<p>§215.6 Comments on proposed actions.</p> <p>(a) <i>Opportunity to comment.</i></p> <p>(1) Time period for submission of comments.</p> <p>(i) Environmental Assessment. Comments on the proposed action shall be accepted for 30 days following the date of publication of the legal notice;</p> <p>(ii) Draft Environmental Impact Statement. Comments on the proposed action shall be accepted for 45 days following the date of publication in the Federal Register pursuant to 40 CFR parts 1500-1508.</p> <p>(iii) It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4);</p> <p>(iv) The time period for the opportunity to comment on environmental assessments shall not be extended.</p> <p>(2) Computation of the comment period. The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m.).</p> <p>(i) Environmental Assessment (EA). The 30-day comment period for proposed actions to be analyzed and documented in an EA begins on the first day after publication of the legal notice.</p> <p>(ii) Draft Environmental Impact Statement (EIS). The 45-day comment period for proposed actions that are analyzed and documented in a draft EIS begins on the first day after publication of the NOA in the Federal Register.</p> <p>(3) <i>Requirements.</i> Individuals and organizations wishing to be eligible to appeal must provide the following:</p> <p>(i) Name and address;</p> <p>(ii) Title of the proposed action;</p> <p>(iii) Specific substantive comments (§215.2) on the proposed action, along with supporting reasons that the Responsible Official should consider in reaching a decision;</p> <p>(iv) Signature or other verification of identity upon request; identification of the individual or organization who authored the</p>	<p>✓ New title</p> <p>✓ Only substantive comments considered</p> <p>✓ No appendix for response to comments</p> <p>✓ No extensions of comment period</p> <p>✓ Allows electronic comments with an automatic acknowledgement</p> <p>✓ Defines 11:59 pm as end of next federal working day for submission of comments except hand-delivered which is by close of business day</p> <p>✓ Legal notice for DEISs</p> <p>✓ Clearly delineates between individual comments and organizational comments re appeal eligibility</p> <p>✓ Clearly outlines where oral comments will be accepted</p>
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<p>them shall be placed in the project file.</p> <p>(e) Notes of oral comments received in response to a notice for public comment pursuant to Sec. 215.5 shall be placed in the files and addressed pursuant to paragraph (d) of this section.</p>	<p>comment(s) is necessary for appeal eligibility:</p> <p>(A) For appeals listing multiple organizations or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each organization and for each individual in the case of multiple names, to meet appeal eligibility requirements;</p> <p>(B) Those using electronic means may submit a scanned signature. Otherwise another means of verifying the identity of the individual or organizational representative may be necessary for electronically submitted comments or comments received by telephone;</p> <p>(v) Individual members of an organization must submit their own substantive comments to meet the requirements of appeal eligibility; comments received on behalf of an organization are considered as those of the organization only; and</p> <p>(vi) Oral comments must be provided at the Responsible Official's office during normal business hours via telephone or in person, or if during non-business hours, must be at an official agency function (such as a public meeting) which is designed to elicit public comment.</p> <p>(4) Evidence of timely submission. When there is a question about timely submission of comments, timeliness shall be determined in the following way:</p> <p>(i) Written comments must be postmarked by the Postal Service, e-mailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. on the 30th calendar day following publication of the legal notice for proposed actions to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the Federal Register for a draft EIS; or</p> <p>(ii) Hand-delivered comments must be time and date imprinted at the correct Responsible Official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed actions to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the Federal Register for a draft EIS.</p> <p>(iii) For electronically mailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the commenter</p>	
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	<p>does not receive an automated acknowledgment, it is the commenter's responsibility to ensure timely receipt by other means.</p> <p>(b) <i>Consideration of comments.</i></p> <p>(1) The Responsible Official shall consider all substantive written and oral comments submitted in compliance with paragraph (a).</p> <p>(2) All written comments received by the Responsible Official shall be placed in the project file and shall become a matter of public record.</p> <p>(3) The Responsible Official shall document and date all oral comments received in response to the legal notice (§215.5) and place them in the project file.</p>	
<p>Sec. 215.7 Decisions subject to appeal.</p> <p>Only the following decisions are subject to appeal under this part:</p> <p>(a) Project and activity decisions documented in a Record of Decision or Decision Notice, including those which, as a part of the project approval decision, contain a nonsignificant amendment to a National Forest Land and Resource Management Plan (36 CFR 219.10).</p> <p>(b) Timber harvest project and activity decisions as described in paragraph 4, Section 31.2 of Forest Service Handbook 1909.15 which are documented in a decision memo.</p>	<p>§215.7 Legal notice of decision.</p> <p>(a) The Responsible Official shall promptly mail the Record of Decision (ROD) or the Decision Notice (DN) and Finding of No Significant Impact (FONSI) to those who requested the decision document and those who submitted substantive comments during the comment period (§215.6).</p> <p>(b) The Responsible Official shall publish a legal notice of any decision documented in a ROD or DN in the applicable newspaper of record (§215.5(b)(2)). The legal notice shall:</p> <p>(1) Include the title of the project or activity and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the DN and FONSI or ROD.</p> <p>(2) State that the decision is subject to appeal pursuant to 36 CFR part 215 and include the following:</p> <p>(i) Name and address of the Appeal Deciding Officer with whom an appeal is to be filed. The notice shall specify a street, postal, fax, and e-mail address, the acceptable format(s) for appeals electronically filed, and the Appeal Deciding Official's office business hours for those filing hand-delivered appeals.</p> <p>(ii) A statement that the publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an appeal (§215.15 (a)) and that those wishing to appeal should not rely upon dates or timeframe information provided by any other source. An actual date shall not be included in the legal notice.</p>	<p>✓ Previously §215.9</p> <p>✓ No date in legal notice</p> <p>✓ Makes clear that a legal notice must always be published</p> <p>✓ New legal notice requirements</p>

	<p>(iii) A statement that an appeal, including attachments, must be filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate Appeal Deciding Officer (§215.8) within 45 days following the date of publication of the legal notice.</p> <p>(iv) A statement indicating that individuals or organizations who submitted substantive comments during the comment period (§215.6) may appeal.</p> <p>(v) A statement specifying, when applicable, that the Chief of the Forest Service, or a designee, has determined that an emergency situation exists (§215.10), and which portion of the project is covered by that determination as provided for in §215.10.</p> <p>(vi) A statement indicating how many days following publication of the decision that implementation may begin (§215.9), including those portions covered by an emergency situation determination, if applicable (§215.10).</p> <p>(3) When no substantive comments expressing concerns or only supportive comments are received, include a statement indicating that the decision is not subject to appeal pursuant to §215.12.</p>																	
<p>Sec. 215.8 Decisions not subject to appeal.</p> <p>(a) The following decisions are not subject to appeal under this part:</p> <p>(1) Project or activity decisions included in a Record of Decision for significant amendment, revision, or approval of a land and resource management plan, appeal of which is governed by 36 CFR part 217;</p> <p>(2) Preliminary findings made during planning and/or analysis processes. Such findings are appealable only upon issuance of a decision document;</p> <p>(3) Actions for which notice and opportunity to comment have been published and on which no expression of interest have been received during the comment period (Sec. 215.6), and on which the Responsible Official's decision does not modify the proposed action; and</p> <p>(4) Decisions for actions that have been categorically excluded from documentation in an environmental assessment or environmental impact statement in FSH 1909.15, Section</p>	<p>§215.8 Appeal Deciding Officer.</p> <p>(a) <i>Appropriate Appeal Deciding Officer.</i> Appeals must be filed with the Appeal Deciding Officer as follows:</p> <table><tr><td colspan="2">-----</td></tr><tr><td>If the responsible official who made the decision is:</td><td>Then the appeal deciding officer is:</td></tr><tr><td colspan="2">-----</td></tr><tr><td>Chief of the Forest Service</td><td>Secretary of Agriculture</td></tr><tr><td>Regional Forester or Station Director</td><td>Chief of the Forest Service.</td></tr><tr><td>Forest Supervisor</td><td>Regional Forester.</td></tr><tr><td>District Ranger.....</td><td>Forest Supervisor</td></tr><tr><td colspan="2">-----</td></tr></table> <p>(b) <i>Authority.</i> The Appeal Deciding Officer makes all procedural determinations. Such determinations are not subject to further administrative review.</p> <p>(1) <i>Consolidation of appeal decisions.</i> In cases involving more than one appeal of a decision, the Appeal Deciding</p>	-----		If the responsible official who made the decision is:	Then the appeal deciding officer is:	-----		Chief of the Forest Service	Secretary of Agriculture	Regional Forester or Station Director	Chief of the Forest Service.	Forest Supervisor	Regional Forester.	District Ranger.....	Forest Supervisor	-----		<p>✓ New section combining §215.13 and §215.19</p> <p>✓ Adds Chief's level and Station Director</p> <p>✓ Changes ADO for District Ranger decisions</p> <p>✓ Information added to clarify what happens with appeals with multiple names</p> <p>✓ Preamble also states merits of appeal not to be discussed with Responsible Official or appellant</p>

If the responsible official who made the decision is:	Then the appeal deciding officer is:																	

Chief of the Forest Service	Secretary of Agriculture																	
Regional Forester or Station Director	Chief of the Forest Service.																	
Forest Supervisor	Regional Forester.																	
District Ranger.....	Forest Supervisor																	

<p>31.1 and 31.2, except as noted in Sec. 215.7(b).</p> <p>(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Appeal Deciding Officer shall dismiss any appeal filed on subsequent implementing actions that result from the initial project decision subject to appeal under Sec. 215.7. For example, an initial decision to offer a timber sale is appealable under this part; subsequent implementing actions to advertise or award that sales are not appealable under this part.</p> <p>(c) Decisions solely affecting the business relationship between the Forest Service and holders of written instruments regarding occupancy and use of National Forest System lands can be appealed by permit holders under either 36 CFR part 251, subpart C, or this part, but cannot be appealed under both regulations.</p>	<p>Officer may consolidate appeals and may issue one or more appeal decisions.</p> <p>(2) <i>Appeals with multiple names (organization(s) or individuals).</i></p> <p>(i) When an appeal lists multiple names, the Appeal Deciding Officer shall identify all qualified appellants (§215.13).</p> <p>(ii) The Appeal Deciding Officer may appoint the first name listed as the lead appellant (§215.2) to act on behalf of all parties to that appeal when the appeal does not specify a lead appellant (§215.14(b)(3)).</p> <p>(3) <i>Appeal disposition.</i></p> <p>(i) The Appeal Deciding Officer shall render the final disposition on an appeal and notify the appellant(s) in writing concerning the disposition of the appeal (§215.15(e)(2)).</p> <p>(ii) The Appeal Deciding Officer may issue an appeal decision different from the Appeal Reviewing Officer's recommendation.</p>	
<p>Sec. 215.9 Notice of decisions.</p> <p>(a) Publication of public notice. The Responsible Official shall publish a notice of any decision which is subject to notice and comment under Sec. 215.3 in a newspaper of general circulation identified pursuant to the requirements of Sec. 215.5(a).</p> <p>(b) Publication of notice of a decision. A notice of a decision published pursuant to this section shall:</p> <p>(1) Include the decision title and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the decision document;</p> <p>(2) Except for decisions on which no expression of interest was received during the comment period (Sec. 215.8(4)), State that the decision is subject to appeal pursuant this part and include the following:</p> <p>(i) State the name and address of the Appeal Deciding Officer with whom an appeal should be filed;</p> <p>(ii) Specify that an appeal must be postmarked and submitted to the Appeal Deciding Officer within 45 days of the date of publication in accordance with Sec. 215.13;</p> <p>(3) For those decisions on which no comment was</p>	<p>§215.9 Decision implementation.</p> <p>(a) When no appeal is filed within the 45-day time period, implementation of the decision may begin on, but not before, the 5th business day following the close of the appeal-filing period (§215.15).</p> <p>(b) Except for emergency situations (§215.10(c)), when an appeal is filed, implementation may occur on, but not before, the 15th business day following the date of appeal disposition (§215.2). In the event of multiple appeals of the same decision, the implementation date is controlled by the date of the last appeal disposition.</p> <p>(c) When a project or activity decision is not subject to appeal (§215.12), implementation may occur as follows:</p> <p>(1) Immediately after publication (§215.7(b)) of a decision documented in a Decision Notice; or</p> <p>(2) Immediately when documented in a Record of Decision after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2).</p>	<p>✓ Previously §215.10</p> <p>✓ Clarifies implementation dates for decisions not subject to appeal - in compliance with CEQ</p>

<p>received, state that the decision is not subject to appeal pursuant to Sec. 215.8(a)(4).</p> <p>(b) Mailing decision documents. The Responsible Official shall promptly mail the decision document to those who request the specific document and to those who submitted comments on the proposed action either before or during the comment period provided pursuant to Sec. 215.6.</p>		
<p>Sec. 215.10 Implementation of decisions.</p> <p>(a) If no appeal is filed, implementation of decisions subject to appeal pursuant to this part may occur on, but not before, 5 business days from the close of the appeal filing period.</p> <p>(b) If an appeal is filed, implementation may not occur for 15 days following the date of appeal disposition. In the event of multiple appeals of the same decision, the date of the disposition of the last appeal controls the implementation date.</p> <p>(c) If a decision is not appealable because, pursuant to Sec. 215.8(a)(3), no expression of interest has during the comment period and there is no change from the proposed action, implementation may occur immediately upon publication of the notice of the decision as provided in Sec. 215.9.</p> <p>(d) A project or activity decision is not subject to a stay if the Chief of the Forest Service determines that an emergency situation exists with respect to the decision in accordance with the following provisions of this paragraph:</p> <p>(1) An emergency, as defined here, is an unexpected event, or a serious occurrence or a situation requiring urgent action. Examples of an emergency include, but are not limited to, the following:</p> <p>(i) Vegetation loss that presents an immediate threat of flooding or landslide.</p> <p>(ii) Hazardous or unsafe situations as a result of wildfire or other circumstances.</p> <p>(iii) Damage to water quality caused by siltation due to fire or flooding.</p> <p>(iv) Potential loss of fish and wildlife habitat due to windstorms and blowdowns.</p> <p>(v) Sudden outbreaks of forest pests and diseases.</p> <p>(2) The Responsible Official shall notify the public that the Forest Service intends to handle this project as an emergency</p>	<p>§215.10 Emergency situations.</p> <p>(a) <i>Authority.</i> The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation (§215.2) exists, and they may delegate this authority only to the Deputy Chief for National Forest System and to the Regional Foresters. Persons acting in these positions may exercise this authority only when they are filling vacant positions and they have been formally delegated full acting authority for the positions. Persons acting in positions during temporary absences of the incumbents shall not be delegated this authority to make emergency situation determinations.</p> <p>(b) <i>Determination.</i> The determination that an emergency situation exists shall be based on an examination of the relevant information. During the review, additional information may be requested.</p> <p>(c) <i>Implementation.</i> When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:</p> <p>(1) Immediately after publication (§215.7(b)) of a decision documented in a Decision Notice, for that portion of the decision determined to be an emergency.</p> <p>(2) Immediately when documented in a Record of Decision, after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2), for that portion of the decision determined to be an emergency.</p> <p>(d) <i>Notification.</i> The Responsible Official shall notify the public in the legal notice of the decision (§215.7) that the Forest Service made a determination that all or part of a project decision is an emergency situation.</p>	<p>✓ New section – information previously in §215.10</p> <p>✓ Authority delegated to RFs and NFS Deputy Chief</p> <p>✓ Cannot be delegated to acting.</p> <p>✓ Additional information on determination and implementation.</p>

<p>in the public notice on proposed actions as provided in Sec. 215.5(c)(1). Actions responding to emergency situations may be accomplished with force account (Forest Service crews), service contracts or timber sale contracts.</p>		
<p>Sec. 215.11 Who may participate in appeals.</p> <p>(a) Except as provided for in paragraph (c) of this section, an appeal pursuant to this part may be filed by any person who, or any non-Federal organization or entity that has met either of the following criteria:</p> <p>(1) Submitted written comment in response to a project draft Environmental Impact Statement; or</p> <p>(2) Provided comments or otherwise expressed interest in a particular proposed action by the close of the comment period specified in Sec. 215.6.</p> <p>(b) Persons interested in or potentially affected by an appeal may participate as an interested party, as provided in Sec. 215.13(e).</p> <p>(c) Federal agencies may not participate as appellants or interested parties.</p> <p>(d) Federal employees filing appeals under this part shall comply with Federal conflict of interest statutes at 18 U.S.C. 202-209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty or use government property or equipment in the preparation or transmittal of an appeal. Employees also shall not use official information not yet released to the public.</p>	<p>§215.11 Decisions subject to appeal.</p> <p>The following decisions are subject to appeal under this part:</p> <p>(a) Decisions for projects and activities implementing land and resource management plans (§215.2) documented in a Record of Decision (ROD) or Decision Notice (DN), including those which contain a non-significant amendment to a land and resource management plan as a part of the decision;</p> <p>(b) A new DN made after revision of an environmental assessment (EA) or a new ROD made after supplementation or revision of an environmental impact statement (EIS) pursuant to FSH 1909.15, Chapter 10, section 18. However, only that portion of the decision that is changed is subject to appeal.</p> <p>(c) Decisions made in conjunction with other Federal agencies and meeting the requirements of preceding paragraph (a). However, only that portion of the decision made by the Forest Service affecting National Forest System lands (§215.2) is subject to appeal under this part.</p> <p>(d) Decisions which affect the holders of a special use authorization or certain applicants for special use authorizations for use or occupancy of National Forest System lands (§251.86) and meeting the requirements of preceding paragraph (a), are subject to appeal by those same parties under either this part or part 251, subpart C, but not under both parts.</p>	<p>✓ Previously in §215.7</p> <p>✓ New decisions added</p>

Sec. 215.12 Where to file appeals. The Appeal Deciding Officer with whom appeals must be filed are as follows:		§215.12 Decisions and actions not subject to appeal. The following decisions and actions are not subject to appeal under this part, except as noted: (a) The amendment, revision, or adoption of a land and resource management plan that includes a project decision, except that the project portion of the decision is subject to this part. The amendment, revision, or adoption portion of a decision is subject to either the objection process of §219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000); (b) Determination, with documentation, that a new decision is not needed following supplementation of an environmental impact statement (EIS) or revision of an environmental assessment (EA) pursuant to FSH 1909.15, Chapter 10, section 18. (c) Preliminary findings made during planning and/or analysis processes on a project or activity. Such findings are appealable only upon issuance of a decision document. (d) Subsequent implementing actions that result from the initial project decision that was subject to appeal. (e) Projects or activities for which notice of the proposed action and opportunity to comment is published (§215.5) and (1) No substantive comments expressing concerns or only supportive comments are received during the comment period for a proposed action analyzed and documented in an EA (§215.6); or (2) No substantive comments expressing concerns or only supportive comments are received during the comment period for a draft EIS (40 CFR 1502.19), and the Responsible Official's decision does not modify the preferred alternative identified in the draft EIS. (f) Decisions for actions that have been categorically excluded from documentation in an EA or EIS pursuant to FSH 1909.15, Chapter 30, section 31. (g) An amendment, revision, or adoption of a land and resource management plan that is made independent of a project or activity (subject to either the objection process of	✓ Previously §215.8 ✓ New decisions or actions added. ✓ Paragraph concerning part 251 appeals moved to §215.11
If the responsible official who made the decision is:	Then the appeal deciding officer is:		
Regional Forester	Chief of the Forest Service.		
Forest Supervisor or.....	Regional Forester.		
District Ranger.....	Regional Forester.		

	<p>§219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000)).</p> <p>(h) Concurrences and recommendations to other Federal agencies.</p>	
<p>Sec. 215.13 Appeal time periods and process.</p> <p>(a) Filing procedures. To appeal a decision under this part, a person must submit a written appeal to the Appeal Deciding Officer within the 45-day appeal filing period specified in the public notice published pursuant to Sec. 215.9.</p> <p>(b) Computation of time periods. (1) The day after the publication of the public notice published pursuant to Sec. 215.9 is the first day of the appeal-filing period.</p> <p>(2) All time periods in this section are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing an appeal. However, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.</p> <p>(c) Evidence of timely filing. The appellant is responsible for submitting an appeal on or before the last day of the appeal-filing period. Where there is a question about timelines of an appeal, the U.S. Postal Service postmark on a mailed appeal or the time and date imprint on a facsimile appeal will be used to determine timeliness.</p> <p>(d) Time extensions. Time extensions are not permitted.</p> <p>(e) Interested party comments. Interested parties must submit written comments to the Appeal Reviewing Officer within 15 days after close of the appeal filing period and are encouraged to provide a copy to the appellants at the same time. An interested party can obtain the address of the Appeal Reviewing Officer and appellants by contacting the Appeal Deciding Officer.</p> <p>(f) Time period for formal disposition. Unless an appeal is resolved through the informal disposition process provided for in Sec. 215.16, the following timeframe and process shall apply:</p> <p>(1) Transmittal of decision documentation. Within 15 days of</p>	<p>§215.13 Who may appeal.</p> <p>(a) Individuals and organizations who submit substantive written or oral comments during the 30-day comment period for an environmental assessment, or 45-day comment period for a draft environmental impact statement (§215.6, 40 CFR 1506.10; FSH 1909.15, Chapter 20), except as provided for in paragraph (c) of this section, may file an appeal. Comments received from an authorized representative(s) of an organization are considered those of the organization only; individual members of that organization do not meet appeal eligibility solely on the basis of membership in an organization; a member must submit substantive comments as an individual in order to meet appeal eligibility.</p> <p>(b) When an appeal lists multiple individuals or organizations, each shall meet the requirements of paragraph (a) of this section. Individuals or organizations that do not meet the requirements of paragraph (a) shall not be accepted as appellants.</p> <p>(c) Federal agencies may not appeal.</p> <p>(d) Federal employees, who otherwise meet the requirements of this part for filing appeals in a non-official capacity, shall comply with Federal conflict of interest statutes at 18 U.S.C. 202-209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty nor use government property or equipment in the preparation or filing of an appeal. Further, employees shall not incorporate information unavailable to the public, i.e. Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).</p>	<p>✓ Previously §215.11</p> <p>✓ Appeal eligibility limited - those who submit substantive comments during either 30 or 45-day comment period.</p> <p>✓ No interested parties</p> <p>✓ Differentiates between organizations and members of organization</p>

<p>the close of the appeal-filing period, the Responsible Official shall transmit the appeal record to the Appeal Reviewing Officer.</p> <p>(2) Review recommendation. Within 30 days of the close of the appeal filing period, the Appeal Reviewing Officer shall review the appeal record and forward it to the Appeal Deciding Officer with a written recommendation on the disposition of the appeal(s). The Appeal Reviewing Officer's recommendation shall be released upon issuance of an appeal decision.</p> <p>(3) Appeal decision. Within 45 days following the end of the appeal filing period, the Appeal Deciding Officer shall issue a written decision or otherwise give notice to appellant(s) concerning the disposition of the appeal. The decision or notice shall briefly explain why the Responsible Official's original decision was affirmed or reversed, in whole or in part.</p>		
<p>Sec. 215.14 Content of an appeal.</p> <p>(a) It is the appellant's responsibility to provide sufficient evidence and rationale along with supporting reasons to show why the Responsible Official's decision should be remanded or reversed.</p> <p>(b) An appeal submitted to the Appeal Deciding Officer becomes a part of the appeal record. An appeal must meet the following requirements:</p> <p>(1) State that the document is an appeal filed pursuant to 36 CFR part 215;</p> <p>(2) List the name and address of the appellant and, if possible, a telephone number;</p> <p>(3) Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;</p> <p>(4) Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;</p> <p>(5) State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period specified in Sec. 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.</p>	<p>§215.14 Appeal content.</p> <p>(a) It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official's decision should be reversed (paragraph (b)(6-9)).</p> <p>(b) The appeal must be filed with the Appeal Deciding Officer §215.8 in writing. At a minimum, an appeal must include the following:</p> <p>(1) Appellant's name and address (§215.2), with a telephone number, if available;</p> <p>(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);</p> <p>(3) When multiple names are listed on an appeal, identification of the lead appellant (§215.2) and verification of the identity of the lead appellant upon request;</p> <p>(4) The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;</p> <p>(5) The regulation under which the appeal is being filed, when there is an option to appeal under either this part or part 251, subpart C (§215.11(d));</p> <p>(6) Any specific change(s) in the decision that the appellant seeks and rationale for those changes;</p>	<p>✓ Adds new requirement re multiple names on an appeal</p> <p>✓ New section for when appeals will not be accepted</p>

	<p>(7) Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;</p> <p>(8) Why the appellant believes the Responsible Official's decision failed to consider the appellant's substantive comments; and</p> <p>(9) How the appellant believes the decision specifically violates law, regulation, or policy.</p> <p>(c) The Appeal Deciding Officer shall not process an appeal when one or more of the following applies:</p> <p>(1) An appellant's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided.</p> <p>(2) The appellant has not provided a reasonable means of contact.</p> <p>(3) The decision cannot be identified.</p> <p>(4) The appeal is illegible for any reason, including those submitted electronically in a format different from that specified in the legal notice.</p>	
<p>Sec. 215.15 Dismissal of appeal without review.</p> <p>(a) An Appeal Deciding Officer shall dismiss an appeal without review when:</p> <p>(1) The appeal is not postmarked or the facsimile is not date imprinted within the 45-day appeal filing period in accordance with Sec. 215.13;</p> <p>(2) The requested relief or change cannot be granted under law, fact, or regulation;</p> <p>(3) The decision at issue is being appealed by the appellant under another administrative proceeding;</p> <p>(4) The decision is excluded from appeal pursuant to Sec. 215.8;</p> <p>(5) The appellant did not express an interest in the specific proposal at any time prior to the close of the comment period specified in Sec. 215.6;</p> <p>(6) The Responsible Official has withdrawn the decision being appealed; or</p> <p>(7) The appellant has filed for Federal judicial review of the decision and the Chief has waived the argument in Sec. 215.20.</p> <p>(b) The Appeal Deciding Officer shall give written notice to</p>	<p>§215.15 Appeal time periods and process.</p> <p>(a) <i>Time to file an appeal.</i> Written appeals, including any attachments, must be filed with the Appeal Deciding Officer within 45 days following the publication date of the legal notice of the decision in the newspaper of record (§215.7). It is the responsibility of appellants to ensure that their appeal is received in a timely manner.</p> <p>(b) <i>Computation of time periods.</i> (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m.).</p> <p>(2) The day after the publication of the legal notice of the decision in the newspaper of record (§215.7) is the first day of the appeal-filing period.</p> <p>(3) The publication date of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file an appeal. Appellants should not rely on dates or timeframe information provided by any other source.</p> <p>(c) <i>Evidence of timely filing.</i> When there is a question about</p>	<p>✓ Previously §215.13</p> <p>✓ Clarifies end of next federal working day is 11:59 p.m.</p> <p>✓ Details how timeliness determined</p> <p>✓ Transmit substantive comments w/decision documentation</p> <p>✓ Makes clear no appeal decision after 45 days</p>

<p>the appellant, interested parties, and Responsible Official that an appeal is dismissed and state the reasons for dismissal</p>	<p>timely filing of an appeal, timeliness shall be determined by:</p> <p>(1) The date of the postmark, e-mail, fax, or other means of filing (for example, express delivery service) an appeal and any attachment;</p> <p>(2) The time and date imprint at the correct Appeal Deciding Officer's office on a hand-delivered appeal and any attachments; or</p> <p>(3) When an appeal is electronically mailed, the appellant should normally receive an automated acknowledgement from the agency as confirmation of receipt. If the appellant does not receive an automated acknowledgement, it is the appellant's responsibility to ensure timely receipt by other means.</p> <p>(d) <i>Extensions</i>. Time extensions, except as noted in paragraph (b) of this section, are not permitted.</p> <p>(e) <i>Other timeframes</i>. Unless an appeal is resolved through the informal disposition process (§215.17), the following timeframes and processes shall apply:</p> <p>(1) Transmittal of decision documentation. Within 15 days of the close of the appeal-filing period, the Responsible Official shall transmit the decision documentation to the Appeal Reviewing Officer including a list of those individuals or organizations who submitted substantive comments.</p> <p>(2) Appeal disposition. Within 45 days following the end of the appeal-filing period, the Appeal Deciding Officer should render a written decision to the appellant(s) concerning their appeal. When an appeal decision is not rendered by day 45, the Appeal Deciding Officer shall notify the appellant(s) in writing that an appeal decision will not be issued (§215.18(b)).</p> <p>(3) When an appeal decision is not issued within 45 days, the Responsible Official's decision is deemed the final agency action.</p>	
<p>Sec. 215.16 Informal disposition.</p> <p>(a) Offer to meet. When a decision is appealed under this part, the Responsible Official must contact the appellant(s) and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after an appeal has been filed.</p> <p>(b) Time and location of meeting. If one or more appellants agree to meet, the meeting(s) must take place not later than 15</p>	<p>§215.16 Dismissal of appeal without review.</p> <p>(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:</p> <p>(1) The postmark on an appeal mailed or otherwise filed (for example, express mail service) or the evidence of the date sent on an e-mailed or faxed appeal is not within the 45-day appeal-filing period (§215.15).</p> <p>(2) The time and date imprint at the correct Appeal Deciding</p>	<p>✓ Previously §215.15</p> <p>✓ New dismissal provisions</p>

<p>days after the closing date for filing an appeal. The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor or Regional Forester is the Responsible Official, meetings will generally take place at a location within or near the National Forest.</p> <p>(c) Type of meeting. Generally, participants shall be physically present at informal disposition meetings. Where an appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. This alternative type meeting also must take place not later than 15 days after the closing date for filing an appeal. The informal disposition meeting must be open to interested parties and the public.</p> <p>(d) Agreement on disposition. The Responsible Official must notify the Appeal Deciding Officer of the names of meeting participants and the outcome of the informal disposition meeting.</p> <p>(1) If the appellant(s) and Responsible Official reach agreement on disposition of the appeal, the Responsible Official shall so notify the Appeal Deciding Officer and the appellant shall withdraw the appeal by letter to the Appeal Deciding Officer no later than 15 days after the meeting. Upon notice from the appellant that the appeal has been withdrawn, the Appeal Deciding Officer shall notify the interested parties, Appeal Reviewing Officer and Responsible Official of the conclusion of the appeal.</p> <p>(2) If, as a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original project decision or environmental analysis are proposed, the Responsible Official must follow the procedures in the Environmental Policy and Procedures Handbook, FSH 1909.15, section 18.</p> <p>(e) Failure to reach agreement. If the appeal is not resolved through the informal disposition meeting, the Responsible Official shall se notify the Appeal Deciding Officer in writing. The Appeal Deciding Officer shall then advise the Appeal</p>	<p>Officer's office on a hand-delivered appeal is not within the 45-day appeal-filing period (§215.15).</p> <p>(3) The requested relief or change cannot be granted under law or regulation.</p> <p>(4) The appellant has appealed the same decision under part 251 (§215.11(d)).</p> <p>(5) The decision is not subject to appeal (§215.12).</p> <p>(6) The individual or organization did not submit substantive comments during the comment period (§215.6).</p> <p>(7) The Responsible Official withdraws the decision.</p> <p>(8) The appeal does not provide sufficient information in response to §215.14(b)(6) through (9) for the Appeal Deciding Officer to render a decision.</p> <p>(9) The appellant withdraws the appeal.</p> <p>(b) Any additional information or attachment to an appeal that is not filed within the 45-day appeal-filing period shall not be considered with the appeal.</p> <p>(c) The Appeal Deciding Officer shall give written notice to the appellant and the Responsible Official when an appeal is dismissed and shall give the reasons for dismissal.</p>	
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<p>Reviewing Officer to proceed with formal review of the appeal.</p>		
<p>Sec. 215.17 Formal disposition.</p> <p>(a) Formal disposition period. The Appeal Deciding Officer shall issue an appeal decision not later than 45 days after the end of the appeal filing period</p> <p>(b) Appeal decision. The Appeal Deciding Officer shall complete a review based on the appeal record as defined in Sec. 215.2 and the Reviewing Officer's recommendation. The Appeal Deciding Officer shall issue a written appeal decision either affirming or reversing the Responsible Official's decision, in whole or in part, and may include instructions for further action. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant, interested parties, the Appeal Reviewing Officer, and the Responsible Official. . If an formal decision is not issued, the Appeal Deciding Officer shall notify the appellant(s) of the disposition of their appeal.</p>	<p>§215.17 Informal disposition.</p> <p>(a) <i>Offer to meet.</i> When an appeal is received, the Responsible Official, or designee, must contact the appellant and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after the Appeal Deciding Officer receives the appeal and the Responsible Official is notified. In the case of multiple names or organizations, it is the responsibility of the lead appellant (§215.2) to contact any other persons named in their appeal who may desire to participate in the informal disposition meeting. If the appellant(s) decline to meet, the Responsible Official shall so advise the Appeal Deciding Officer.</p> <p>(b) <i>Time and location of meeting.</i> When an appellant agrees to meet, the initial meeting shall take place within 15 days after the closing date for filing an appeal (§215.15). The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor, Regional Forester, or the Chief is the Responsible Official, meetings will generally take place at a location within or near the National Forest.</p> <p>(c) <i>Meeting structure.</i> Generally, the appellant(s) should be physically present at informal disposition meetings. If the appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. All meetings are open to the public.</p> <p>(d) <i>Outcome.</i> After the informal disposition meeting, the Responsible Official shall notify the Appeal Deciding Officer in writing of the meeting participants and which of the following three outcomes occurred.</p> <p>(1) An appellant and the Responsible Official reach agreement on disposition of all or a portion of an appeal. The appellant shall withdraw all or the agreed upon portion of the appeal by letter to the Appeal Deciding Officer within 15 days of the agreement. When the appellant does not withdraw the appeal in writing, formal review and disposition of the appeal</p>	<p>✓ Previously §215.16</p> <p>✓ First meeting within 15 days</p> <p>✓ Outcome scenarios outlined</p>

	<p>shall continue.</p> <p>(2) As a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original decision or environmental analysis are proposed. The Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18, and §§215.3 and 215.4.</p> <p>(3) An appeal is not entirely resolved through informal disposition. Formal review and disposition of the unresolved portion of the appeal shall continue (§215.18).</p>	
<p>Sec. 215.18 Appeal deciding officer authority.</p> <p>(a) Consolidation of appeal decisions. In cases involving multiple appeals of a decision subject to this part, the Appeal Deciding Officer shall determine whether to issue one appeal decision or separate appeal decisions.</p> <p>(b) Procedural decisions. The Appeal Deciding Officer make all procedural determinations in this part. Such determinations are not subject to further administrative review.</p> <p>(c) Appeal decisions. The Appeal Deciding Officer's decision constitutes the final administrative determination of the Department of Agriculture</p>	<p>§215.18 Formal review and disposition procedures.</p> <p>(a) <i>Scope of review.</i> The Appeal Deciding Officer shall complete a review based on the appeal record (§215.2) and the Appeal Reviewing Officer's recommendation (§215.19(b)).</p> <p>(b) <i>Disposition.</i> The Appeal Deciding Officer shall either:</p> <p>(1) Issue a written appeal decision within 45 days following the end of the appeal-filing period, which affirms or reverses the Responsible Official's decision, either in whole or in part, and which may include instructions for further action. When an appeal decision involves instructions concerning new information or changed circumstances, the Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18 and §§215.3, 215.4, 215.11, and 215.12. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant(s), the Appeal Reviewing Officer, and the Responsible Official within 5 days; or</p> <p>(2) Not issue an appeal decision and so notify the appellant(s) in writing that an appeal decision will not be issued and that the Responsible Official's decision constitutes the final agency action of the Department of Agriculture (§215.15(e)(2)). Notification shall be sent no sooner than 46 days or later than 50 days following the end of the appeal-filing period.</p> <p>(c) <i>Final administrative determination.</i> The Appeal Deciding Officer's appeal disposition constitutes the final administrative determination of the Department of Agriculture.</p>	<p>✓ Appeal decision within 45 days</p> <p>✓ Appeal decision mailed within 5 days of making</p> <p>✓ If no decision by 45 da6s, notify appellants 46-50 days</p> <p>✓ Information on how to handle new information detailed</p>

<p>Sec. 215.19 Appeal reviewing officer authority.</p> <p>(a) Identification of Appeal Reviewing Officer. An agency official at the Washington Office level designated by the Chief is the Appeal Reviewing Officer for appeals of Regional Forester Decisions. The Appeal Reviewing Officer shall be an officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal and has not participated in the initial decision and will not be responsible for implementing the initial decision after the appeal is decided.</p> <p>(b) Scope of review. (1) The Appeal Reviewing Officer's review of decisions under this part focuses on decision documentation developed by the Responsible Official in reaching the decision and issues raised in the appeal, and comments submitted by interested parties.</p> <p>(c) Consolidation of recommendations. In cases involving multiple appeals of a decision subject to this part, the Appeal Reviewing Officer shall determine whether to issue one recommendation or separate recommendations</p>	<p>§215.19 Appeal Reviewing Officer.</p> <p>(a) <i>Designation.</i> The Appeal Reviewing Officer shall be:</p> <p>(1) Designated by the Chief or designee, and shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided; or</p> <p>(2) Designated by the Secretary in the case of Chief's decisions.</p> <p>(b) <i>Review and recommendation.</i> The Appeal Reviewing Officer shall review an appeal and the decision documentation and make a written recommendation to the Appeal Deciding Officer on the disposition of the appeal. That recommendation shall be released only upon issuance of an appeal decision.</p> <p>(c) <i>Multiple appeals.</i> In cases involving more than one appeal of a decision, the Appeal Reviewing Officer may consolidate appeals and issue one or more recommendations.</p>	<p>✓ Must be a line officer</p> <p>✓ Preamble discusses no communication on merits of appeal with Responsible Official or appellant.</p>
<p>Sec. 215.20 Policy in event of judicial proceedings.</p> <p>Unless waived in a specific case, it is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part.</p>	<p>§215.20 Secretary's authority.</p> <p>(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.</p> <p>(b) Decisions of the Secretary of Agriculture or Under Secretary, Natural Resources and Environment are not subject to the notice, comment, and appeal procedures set forth in this part. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture</p>	<p>✓ New section</p>
<p>Sec. 215.21 Applicability and effective date.</p> <p>(a) The requirements of Sec. 215.5 of this part to provide notice and opportunity to comment on proposed actions described in Sec. 215.3 is effective January 3, 1994.</p> <p>(b) Decisions for which notice has been given pursuant to 36 CFR 217.5 prior to January 3, 1994, remain subject to the appeal procedures of 36 CFR part 217.</p>	<p>§215.21 Judicial proceedings.</p> <p>It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to appeal is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the appeal procedures in this part (7 U.S.C. 6912 (e)).</p>	<p>✓ Previously §215.20</p> <p>✓ No option for waiver</p>

	<p>§215.22 Applicability and effective date.</p> <p>(a) The notice, comment, and appeal procedures set out in this part, except as noted in paragraph (b) below, apply to all projects and activities for which legal notice is published pursuant to §215.5 on or after June 4, 2003.</p> <p>(b) The provisions concerning electronic comments (§§215.5(b)(vi-vii) and 215.6(a)(4)(iii)) and electronic appeals (§§215.7(b)(2)(i) and (iii) and 215.15(c)(1) and (3)) are effective July 3, 2003.</p> <p>(c) The notice, comment, and appeal procedures of part 215 in effect prior to June 4, 2003 remain in effect for those projects and activities for which legal notice (§§215.5 or 215.7) is published prior to June 4, 2003 (see 36 CFR parts 200 to 299, Revised as of July 1, 2002).</p>	<p>✓ Previous §215.21</p> <p>✓ Effective immediately except electronic appeals and comments</p>
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